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7 Attorney for:

8 Larissa Kirakosian

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO VALLEY DIVISION

9 In Re:

10 LARISSA KIRAKOSIAN,

11 Debtor.

) CASE NO.: 1:18-bk-11359-MB

) CHAPTER 13

) OPPOSITION TO MOTION FOR RELIEF
) FROM THE AUTOMATIC STAY, AND
) DECLARATION OF LARISSA
) KIRAKOSIAN IN SUPPORT

) Date: July 18, 2018

) Time: 10:00 a.m.

) Ctrm: 303

12
13
14 TO THE HONORABLE MARTIN BARASH, UNITED STATES BANKRUPTCY
15 JUDGE, AND MOVANT:

16 Larissa Kirakosian ("Debtor") files her Opposition to the Motion For Relief From The
17 Automatic Stay ("Motion") filed by Aran Investments Inc., its Successors and Assigns.

18 1. The Debtor owned the home located at 17966 Valley Vista Blvd., Los Angeles,
19 CA. The Debtor still resides there. It has been her home since she bought it in January, 2016.
20 A true and correct copy of the Buyer's Closing Statement is attached as Exhibit "1" and
21 incorporated by reference. The lender for the purchase was Banc of California, National
22 Association.

23 2. Unfortunately, because of certain medical issues, the loan went into default, and
24 the Debtor filed a Chapter 13 Petition and was assigned case number 18-10905. That case was
25 dismissed on April 13, 2018. The Debtor filed the instant Chapter 13 Petition on May 29, 2018,
26 In Pro Se. She filed her full Petition, Schedules and Chapter 13 Plan. The case was dismissed on
27 June 18, 2018 because the Debtor apparently failed to file a document. On June 19, 2018, the
28

1 Debtor filed a Motion to vacate the dismissal, which was granted by Order entered on June 22,
2 2018. It appears that the dismissal was in error because the Debtor did file all of the necessary
3 documents. Accordingly, the automatic stay should have remained in place during the short time
4 the case was dismissed.

5 3. However, while the case was dismissed, the creditor effectively ran to conduct its
6 foreclosure sale, which occurred on June 19, 2018. It is baffling to see how the lender could
7 have foreclosed, literally, the day after the case was first dismissed. Was the foreclosure sale
8 conveniently scheduled for the day after the Dismissal? How is that possible? The Debtor has
9 very serious concerns about the validity and legitimacy of the foreclosure sale. Before the
10 Motion can be heard on the merits, the lender and Movant should be forced to prove, even just on
11 the surface, how the foreclosure sale is valid under California law.

12 4. Upon learning of the sale, the Debtor immediately contacted the lender to inform
13 them of this error. The lender said it would reverse the sale if and when the dismissal was
14 vacated. However, the lender is now unwilling to do so.

15 5. The Motion provides various grant deeds and a deed of trust. The Debtor has no
16 knowledge of any of these documents, nor has any knowledge of any of the persons listed on the
17 grant deeds and deed of trust. The Debtor is a victim of hijacking by these nefarious individuals.
18 And the Debtor was not nor is not involved in any of these transactions.

19 6. Indeed, the Debtor has been in contact with a real estate agent and seeks to list and
20 sell the property for approximately \$1,700,000. This price will pay off the lender who had the
21 Note and Deed of Trust when the Debtor purchased the home. Indeed, the lender did not
22 previously foreclose because the Debtor had submitted a loan modification package. However,
23 while that was under review, the loan was apparently transferred, and the new lender (Aver
24 Investments) immediately sought to foreclose. It more than appears the lender violated
25 California foreclosure law by ignoring the loan modification package and sought to immediately
26 foreclose. It also appears the Substitution of Trustee was sent and recorded after the Notice of
27 Trustee's Sale was recorded and this violates California law as well.

28 7. The Motion is wrong for many reasons. It says the Debtor filed only a few of the

1 required documents. That is blatantly false, as a simple review of the Docket will confirm. The
2 Motion alleges the case was filed in bad faith; the Debtor disputes this. The Motion fails to
3 explain why it alleges this case was filed in bad faith. If the basis is because there was one prior
4 case, that argument should fall flat on its face. Indeed, that is not the law in the Ninth Circuit.
5 Multiple filings, two cases alone is not a basis for a bad faith conclusion.

6 8. The Motion seeks annulment of the stay, and the Debtor objects to this request.
7 Annulment is an extraordinary remedy. First, annulment is within the discretion of the Court; it
8 is certainly not mandatory. In 40235 Washington Street Corporation, a California Corporation,
9 v. W. C. Lusardi, 329 F.3d 1076 (9th Cir. 2003), the Court held that Section 362(a) of the
10 Bankruptcy Code provides that the filing of a bankruptcy petition creates an automatic "stay,
11 applicable to all entities, of," inter alia, "any act to create, perfect, or enforce any lien against
12 property of the estate." 11 U.S.C. § 362(a). The scope of the automatic stay is broad. In re
13 Bialac, 694 F.2d 625, 627 (9th Cir. 1982).

14 9. In National Environmental Waste, 129 F.3d 1052 (9th Cir. 1997) the Ninth Circuit
15 noted that in deciding whether to annul the stay and grant relief from stay retroactively, many
16 courts focus on two factors: "(1) whether the creditor was aware of the bankruptcy petition; and
17 (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result
18 to the creditor." 129 F.3d at 1055. However, in addition to considering these two factors, a court
19 must "balance[] the equities in order to determine whether retroactive annulment is justified." *Id.*
20 Such a determination necessarily involves a "case by case analysis." *Id.*, citing Christensen v.
21 Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990).

22 10. In In re Fjeldsted 293 B.R. 12 (9th Cir. BAP 2003), the Chapter 13 debtor
23 appealed the Court's decision to annul the automatic stay retroactively for "cause" under §
24 362(d)(1), (2) in order to validate an otherwise void, postpetition foreclosure sale of the debtor's
25 residence to a good faith purchaser for value and without notice of the bankruptcy ("bona fide
26 purchaser"). The BAP held that "We conclude that a determination of whether or not to annul
27 the automatic stay and thereby grant retroactive relief requires the court to balance the equities,
28 and that bona fide purchaser status alone is not cause to validate a sale. We are also bound by

1 Value T Sales, Inc. v. Mitchell (In re Mitchell), 279 B.R. 839 (9th Cir. BAP 2002), an opinion
2 decided after entry of the bankruptcy court's judgment, which held that bona fide purchaser status
3 under § 549© is not an exception to the automatic stay. We also clarify that a Ninth Circuit court
4 "balances the equities in order to determine whether retroactive annulment is justified"--the test
5 set forth in Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.), 129
6 F.3d 1052, 1055 (9th Cir. 1997), cert. denied, 524 U.S. 952 (1998), and that the standard is not
7 "extreme circumstances," which is at odds with the court's broad exercise of its discretion.
8 Therefore, we REVERSE and REMAND the stay relief order. We also REVERSE and
9 REMAND the sanction order, as the sanction was imposed without adequate due process."
10 Fjeldsted also holds that, when determining whether to annul the stay, the court must balance the
11 equities to determine if cause exists."

12 11. When balancing the equities in this case, there is no cause to annul the automatic
13 stay. And in fact there is no cause to grant the Motion. Movant has not met its burden of proof
14 and therefore the Motion ought to be denied.

15 12. The Motion alleges there were prior bankruptcy cases filed by others. The Debtor
16 is unaware of these people, and believes she is the victim of hijacking. She did not authorize any
17 prior cases by anyone other than herself, and she was unaware of them until now. In fact, the
18 Debtor has filed a Police Report on this issue, showing that the Debtor is a victim of stolen
19 identity. A true and correct copy of the Police Report is attached as Exhibit "2" and incorporated
20 by reference.

21 13. The home is the Debtor's residence and is definitely necessary to an effective
22 reorganization. And while the Motion makes the naked assertion otherwise, it is not supported
23 by any facts. The Debtor is trying to retain her home, and this Chapter 13 case will allow the
24 Debtor to do so.

25 14. The Declaration supporting the Motion alleges that Movant is the authorized
26 agent for the owner. So then who is the owner?

27 15. The Declaration of Andrea Edmiston is fraught with inadmissible statements. It
28 contains hearsay, and lacks foundation for many of her statements. The entire Declaration ought

1 to be stricken and not considered in determining whether to grant the Motion.

2 16. Finally, the prayer of the Motion is wrong. Movant has checked every box which
3 is clearly inappropriate. And, the Court may not even have the jurisdiction and authority to
4 render several of the requests.

5 WHEREFORE, the Debtor prays for an order as follows:

6 1. That the Motion be denied; ;

7 2. For such other relief as the Court deems just and proper.

8 Date: July 5, 2018

9
10 

11 Gilbert Geilim, attorney for

12 Larissa Kirakosian, Debtor

DECLARATION OF LARISSA KIRAKOSIAN

I, Larissa Kirakorsian, declare as follows:

17. I am the Debtor in this case and I have personal knowledge of the following information and, if called upon to testify, I could and would competently testify to the following. I have reviewed the Motion, my files, records and recollections in this matter. I am personally familiar with my files, records and recollections involving this matter, and I am the one in control of the files, records and recollections. All entries in my files and records, and all recollections I maintain were made or formed at or around the time the communications that are the subject of the instant action occurred.

18. I owned the home located at 17966 Valley Vista Blvd., Los Angeles, CA. I still reside there. It has been my home since I bought it in January, 2016. A true and correct copy of the Buyer's Closing Statement is attached as Exhibit "1" and incorporated by reference. The lender for the purchase was Banc of California, National Association.

19. Unfortunately, because of certain medical issues I had, the loan went into default, and I filed a Chapter 13 Petition and was assigned case number 18-10905. That case was dismissed on April 13, 2018. I filed the instant Chapter 13 Petition on May 29, 2018, In Pro Se. I filed my full Petition, Schedules and Chapter 13 Plan. However, the case was dismissed on June 18, 2018 because I apparently failed to file a document. I disagree with that however. On June 19, 2018, I filed a Motion to vacate the dismissal, which was granted by Order entered on June 22, 2018. It appears that the dismissal was in error because I did file all of the necessary documents. Accordingly, the automatic stay should have remained in place during the short time the case was dismissed.

20. However, while the case was dismissed, the creditor effectively ran to conduct its foreclosure sale, which occurred on June 19, 2018. It is baffling to see how the lender could have foreclosed, literally, the day after the case was first dismissed. Was the foreclosure sale conveniently scheduled for the day after the Dismissal? How is that possible? I have very serious concerns about the validity and legitimacy of the foreclosure sale. Before the Motion can be heard on the merits, the lender and Movant should be forced to prove, even just on the

1 surface, how the foreclosure sale is valid under California law.

2 21. Upon learning of the sale, I immediately contacted the lender to inform them of
3 this error. The lender said it would reverse the sale if and when the dismissal was vacated.
4 However, the lender is now unwilling to do so.

5 22. The Motion provides various grant deeds and a deed of trust. I have no
6 knowledge of any of these documents, nor have any knowledge of any of the persons listed on
7 the grant deeds and deed of trust. I am a victim of hijacking by these nefarious individuals. And
8 I was not nor is not involved in any of these transactions.

9 23. Indeed, I have been in contact with a real estate agent and seek to list and sell the
10 property for approximately \$1,700,000. This price will pay off the lender who had the Note and
11 Deed of Trust when I purchased the home. Indeed, the lender did not previously foreclose
12 because I had submitted a loan modification package. However, while that was under review, the
13 loan was apparently transferred, and the new lender (Aver Investments) immediately sought to
14 foreclose. It more than appears the lender violated California foreclosure law by ignoring the
15 loan modification package and sought to immediately foreclose. It also appears the Substitution
16 of Trustee was sent and recorded after the Notice of Trustee's Sale was recorded and I
17 understand this violates California law as well.

18 24. The Motion is wrong for many reasons. It says I filed only a few of the required
19 documents. That is, as a simple review of the Docket will confirm. The Motion alleges the case
20 was filed in bad faith; I dispute this. The Motion fails to explain why it alleges this case was
21 filed in bad faith. If the basis is because there was one prior case, that argument should fall flat
22 on its face. Multiple filings, two cases alone is not a basis for a bad faith conclusion.

23 25. The Motion seeks annulment of the stay, and the Debtor objects to this request.
24 Annulment is an extraordinary remedy. First, annulment is within the discretion of the Court; it
25 is certainly not mandatory. When balancing the equities in this case, there is no cause to annul
26 the automatic stay. And in fact there is no cause to grant the Motion. Movant has not met its
27 burden of proof and therefore the Motion ought to be denied.

28

Exhibit "1"



9440 Santa Monica Blvd., #310
Beverly Hills, CA 90210

Phone: (310) 402-5555
Fax: (310) 424-4045
www.escrowofthewest.com

BUYER'S ESTIMATED CLOSING COSTS

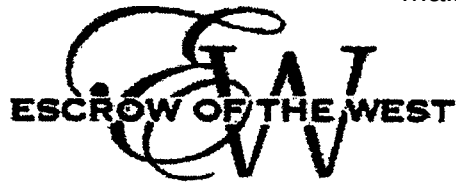
PROPERTY: 17966 Valley Vista Boulevard
Los Angeles (Encino Area), CA 91316
DATE: January 13, 2016
BUYER: Larisa Kirakosian
CLOSING DATE: January 15, 2016
ESCROW NO.: 02-024741-LD
ESCROW OFFICER: Lynne Davis

	DEBITS	CREDITS
FINANCIAL CONSIDERATION		
Total Consideration	1,340,000.00	
Deposit from Larisa Kirakosian		40,200.00
Deposit from Securline Realty FBO Larisa Kirakosian		20,000.00
New 1st Trust Deed - Banc of California, N.A.		1,072,000.00
LOAN INFORMATION - Banc of California, N.A.		
[Charges \$4,460.94]		
Origination Charge	1,695.00	
Appraisal Fee POC (B*) Banc Home Loans \$500.00	450.00	
Credit Report Banc of California	34.00	
Lender Credits	-10.00	
Tax Service Fee CoreLogic	71.00	
Flood Certification Lereta LLC	10.00	
Interest at \$122.8300/day from 01/14/2016 to 02/01/2016	2,210.94	
PRORATIONS/ADJUSTMENTS		
1st 1/2 2015-16 Taxes at \$7855.37/semi-annually from 01/01/2016 to 01/15/2016		610.97
OTHER DEBITS/CREDITS		
Farmers Insurance Insurance Premium	4,291.92	
Refundable Buffer unused portion to be refunded at close	500.00	
TITLE/TAXES/RECORDING CHARGES - First American Title Company		
Title - Lender's Title Insurance	960.00	
Title - Sub Escrow Fee	62.50	
Title - Wire Fee	25.00	
Title - Endorsement Fees	250.00	
Recording Grant Deed	50.00	
Recording Trust Deed	175.00	
ESCROW CHARGES - Escrow of the West		
Title - Escrow Fee	1,850.00	
Title - Loan Tie-In Fee	250.00	
Title - Overnight Fee	45.00	
Title - Archive Fee	50.00	
Title - Notary Fee	200.00	
Funds required		220,359.39
TOTAL	\$ 1,353,170.36	\$ 1,353,170.36

THIS IS AN ESTIMATE ONLY AND FIGURES ARE SUBJECT TO CHANGE

Larisa Kirakosian

SIGN AND RETURN



9440 Santa Monica Blvd., #310
Beverly Hills, CA 90210

Phone: (310) 402-5555
Fax: (310) 424-4045
www.escrowofthewest.com

INCOMING WIRE INSTRUCTIONS

CITY NATIONAL BANK
555 South Flower Street
Los Angeles, CA 90071
ATTN: WIRE DEPARTMENT

Routing Number/ABA #: **122016066**

Swift Code (International): **CINAUS6L**

Credit To: **ESCROW OF THE WEST**

Trust Account Number: **555021208**

Wire amount should be **\$220,359.39**

Please reference Escrow Number **02-024741-LD** when sending.

NOTE: ESCROW OF THE WEST IS UNABLE TO ACCEPT DIRECT DEPOSITS IN CASH, CHECKS, ACH'S OR ANY OTHER TYPE OF TRANSACTION in any branch of City National Bank.

If you are a City National Bank account holder, please assure to send "INTERNAL WIRE TRANSFER" – ONLY.

All transactions are subject to prior verification by Escrow of the West; City National Bank has specific instructions to reject any direct deposit.

Exhibit "2"

1964

1. I paid for the

Antelope

100-443887-1000

100

1990



1990

...the ...

[illegible]

1. **THE STATE OF TEXAS, COUNTY OF DALLAS, ss. I, _____, Clerk of the County Court, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the County Court of the County of Dallas, State of Texas.**
 2. **IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the County Court at Dallas, Texas, this _____ day of _____, 19____.**
 3. **_____, Clerk of the County Court.**
 4. **_____, County Clerk.**

100

[illegible]

100

100

Exhibit "3"



\$1,750,000

- Active

17966 Valley Vista Boulevard

Encino, CA 91316

5 bed(s) | 5 bath(s) | 4,290 square ft.

Ara Haritunian

DRE #01050355

818-414-5533

Description

BEAUTIFUL PROPERTY LOCATED IN THE HEART OF ENCINO OFF OF VENTURA BLVD. VERY NICE QUIET FRIENDLY NEIGHBORHOOD. YOU WONT BE DISSAPOINTE!

Listing Details

Address: 17966 Valley Vista Boulevard

Status: Active

ML#: SR18141172

APN: 2182014017

Orig. List Price: \$1,750,000

Price Per Sqft: \$408

County: Los Angeles

Property Type: Single Family Residence

Bedrooms: 5

Bath(F,T,H,Q): 5,0,0,0

Sqft (Src): 4,290 ()

Ac/LotSqft (Src): 0.13 / 5,750 (Assessor)

AC: Yes

View: Yes

Pool: Yes

Area: ENC - Encino

Year Built: 1953

Sale Type: Standard

Stories: One,Two

Stories Total: 1

Units Total: 1

Senior Community: No

Lease Considered: No

Interior Features

Features: Balcony

Fireplace: See Remarks

Cooling: See Remarks

Heating: Central Furnace

Laundry: In Garage

Rooms: Formal Entry and See Remarks

Exterior Features

Pool: Private and In Ground

Common Walls: No Common Walls

View: Valley

Lot Features: Back Yard, Front Yard, Paved, and Walkstreet

Community Features: Curbs, Sidewalks, and Valley

Sewer/Septic: Unknown

Water Source: See Remarks

Garage and Parking

Spaces Total: 2

Garage Att/Det: Attached

Parking Spaces: 2.00

Garage Spaces: 2.00

Land

Lot Number: 155

Tract Number: 10491

Zone: LAR1

Units Total Number: 1

Assessment: None

Association Dues 1: \$0 ()

Lease/Fees

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
16156 San Fernando Mission Suite#8 Granada Hills, CA 91344

A true and correct copy of the foregoing document entitled: **OPPOSITION TO MOTION** will be served or was served
(a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General
Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date)
_____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the
following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:**

On (date) 07/06/2018, I served the following persons and/or entities at the last known addresses in this bankruptcy
case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail,
first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the
judge will be completed no later than 24 hours after the document is filed.

Honorable Martin R. Barash
21041 Burbank Blvd. Court Room #301
Woodland Hills, CA 91367

United States Trustee/ Elizabeth F. Rojas
15260 Ventura Blvd. Suite#710
Sherman Oaks, CA 91403

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method
for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the
following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to
such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration
that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is
filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

07/06/2018 Vidal Figueroa
Date Printed Name


Signature